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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,236	10/30/2001	Ian J. Barclay	47097-01034	8861

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EXAMINER

BRITTAIN, JAMES R

ART UNIT PAPER NUMBER

3677

DATE MAILED: 12/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/021,236

Applicant(s)

BARCLAY ET AL.

Examiner

James R. Brittain

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-118 is/are pending in the application.
- 4a) Of the above claim(s) 70-110 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-11, 13-49, 60-69, 117 and 118 is/are allowed.
- 6) ☒ Claim(s) 1-8, 12, 50-59 and 111-116 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3. 6) ☒ Other: Not Infr. Maint.

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-69 and 111-118, drawn to an article and method of making the article, classified in class 24, subclass 30.5r.
- II. Claims 70-110, drawn to the apparatus for making the article, classified in class 219, subclass 121.72.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice for the process claim of invention I. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another materially different apparatus such as a flat planar tray that has a slot and the laser traverses the slot to cut the material.

Inventions II and I are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the product as claimed can be made by another and materially different apparatus

Art Unit: 3677

such as a flat planar tray that has a slot and the laser traverses the slot to cut the material.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Daniel Burnham on December 4, 2002 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-69 and 111-118. Affirmation of this election must be made by applicant in replying to this Office action. Claims 70-110 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3677

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-7 and 111-116 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Herrington (US 5088971).

Herrington (figures 1, 2) teaches a first track 18 including a first profile 17 and a second track 19 including a second profile 16 wherein the tracks have lengths defined by opposing ends with the ends sealed together by a hot knife and melting the material of the track. Ends stops are formed and the structure so created appears to be the same as that created by applicant's process. Applicant has provided no evidence that the article is different. The surfaces as shown in the figures are smooth.

Claim 12 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Provan et al. (US 6470551).

Provan et al. (figure 7) teaches two tracks having profiles with a notch 38 between them. There is plastic material in the form of depending flanges 14, 14 that are sealed together in area 28. The final product has the profiles and depending sealed flanges and the structure so created appears to be the same as that created by applicant's process. Applicant has provided no evidence that the article is different.

Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herrington (US 5088971) in view of Herrington, Jr. (US 5448807).

Herrington '971 (figures 1, 2) teaches a first track 18 including a first profile 17 and a second track 19 including a second profile 16 wherein the tracks have lengths defined by opposing ends with the ends sealed together by a hot knife and melting the material of the track. Ends stops are formed and the structure so created appears to be the same as that created by applicant's process. Applicant has provided no evidence that the article is different. The surfaces as shown in the figures are smooth. The difference is that there is no additional component attached at the ends. However, Herrington, Jr. '807 (figure 1) teaches placing added clips 30 over the ends and fusing them with the tracks for added security. It would have been obvious to utilize added clips over the ends of the tracks of Herrington '971 in view of Herrington '807 teaching placing added clips 30 over the ends and fusing them with the tracks for added security.

Claims 50-54, 56, 57, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andreoli et al. (US 5225649) in view of Kurihara et al. (US 5382773).

Andreoli et al. (figures 4-6) teaches a method of severing web material by using a laser and a drum to provide a stable cutting station by suctioning the material against

Art Unit: 3677

the drum. The drum has grooves aligned with the path of the laser as it cuts. The laser is directed toward the inside of the drum. The difference is that the grooves are not slots. However, Kurihara et al. (figure 3) teaches perforating the drum with slots 34 rather than using grooves to help provide the apertures in the web so as to have better performance of the process. It would have been obvious to modify the process of Andreoli et al. so that the grooves extend from the outer to an inner surface so as to define slots as suggested by Kurihara et al. teaching perforating the drum with slots 34 rather than using grooves to help provide the apertures in the web so as to have better performance of the process. As to claim 54, the use of a galvanometer-driven optic is a matter of design since that of Andreoli et al. performs the same function. The use of a polymeric web is well known as evidenced by Kurihara et al.

Claims 55 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andreoli et al. (US 5225649) in view of Kurihara et al. (US 5382773) as applied to claims 50 and 57 above, and further in view of Kendall (WO 98/16430).

Further modification of the method of Andreoli et al. such that the material that is severed is bag material with foil would have been obvious in view of Kendall teaching that it is conventional to use such a process for bag material (page 8, ¶2-3).

### ***Allowable Subject Matter***

Claims 9-11, 13-49, 60-69, 117, and 118 are allowed.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents of Voss et al. (US 6064032), Dombek et al. (US

Art Unit: 3677

6325068), Belanger et al. (US 6056682), Richter et al. (US 6046427), Balster et al. (US 6038487), Ehlscheid et al. (US 4049945), Sepavich et al. (US 5213649), Vinberg (US 6168558), Gershenson et al. (US 6255620), Smith et al. (US 5062825), Soodak et al. (US 4945203), Whittle et al. (US 3971299), Lee (US 3981230), Branson (US 4892512), Fukuda (EP 775634), and Matsumoto et al. (US 6427295) teach pertinent cutting and fastener method and structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on Monday - Friday from 5:30 to 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB  
December 16, 2002



Application/Control Number 10/021,236  
Art Unit 3677

Attachment to Paper No. 5

### Notice Regarding Treatment of Irradiated Correspondence

The following papers have not been made part of the permanent records of the United States Patent and Trademark Office (Office) for this application (37 CFR 1.52(a)) because of damage from the United States Postal Service irradiation process:

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If applicant wants to review the accuracy of the Office's copy of such papers, applicant may either inspect the application (37 CFR 1.14(d)) or may request a copy of the Office's records of such papers (*i.e.*, a copy of the copy made by the Office) from the Office of Public Records for the fee specified in 37 CFR 1.19(b)(4). Please do **not** call the Technology Center's Customer Service Center to inquiry about the completeness or accuracy of Office's copy of the above-identified papers, as the Technology Center's Customer Service Center will **not** be able to provide this service.

If applicant does not consider the Office's copy of such papers to be accurate, applicant must provide a copy of the above-identified papers (except for any U.S. or foreign patent documents submitted with the above-identified papers) with a statement that such copy is a complete and accurate copy of the originally submitted documents. If applicant provides such a copy of the above-identified papers and statement within **THREE MONTHS** of the mail date of this Office action, the Office will add the original mailroom date and use the copy provided by applicant as the permanent Office record of the above-identified papers in place of the copy made by the Office. Otherwise, the Office's copy will be used as the permanent Office record of the above-identified papers (*i.e.*, the Office will use the copy of the above-identified papers made by the Office for examination and all other purposes). This three-month period is not extendable.